IN THE U.S. PATENT AND TRADEMARK OFFICE BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of

Saburou IKEDA	Appeal No. _____
Application No. 09/893,706	Group 3639
Filed June 29, 2001	Examiner A. Robinson Boyce

SYSTEM FOR TOLL PAYMENT AND
TRANSPORTATION MANAGEMENT

REPLY BRIEF

MAY IT PLEASE YOUR HONORS: April 23, 2007

      This Reply Brief is in response to the Examiner's Answer mailed February 21, 2007 and addresses the Examiner's Response to Arguments set forth on pages 16-18 of the Examiner's Answer. Although the Reply Brief responds to the limitations noted in the Response to Arguments sections, nevertheless, those limitations that are not further argued are not conceded.

      The first element, which is included in each of the independent claims, is a second memory that stores the names of users having a contract with the toll payment service or the car numbers of such users. The memory also stores the unit toll for each section along a highway. This memory is part of a server and is used to determine whether the name in the memory is a person that has a contract with the toll collecting company and

thus, is entitled to use the electronic payment service. See, for example, page 7, lines 13-20 of the present specification.

The Examiner's position as set forth in the paragraph bridging pages 16 and 17 of the Examiner's Answer is that since TREYZ et al.'s system is capable of storing car numbers through capturing and storing the captured images of license plates as disclosed on column 78, lines 8-10 and lines 27-30, such capturing and storing function meets the limitation of the recited memory.

However, as pointed out in the Appeal Brief (last two paragraphs of page 4 and first two paragraphs of page 5) the number that is captured by TREYZ is the license number of a car that is following TREYZ, not the license number of TREYZ. The person following TREYZ may not have a contract with the toll payment service and in any event, such person may have traveled a different distance than TREYZ.

Calculating a toll based on the person following TREYZ is nonsensical and defeats the purpose of having a toll calculated for each individual user based on the distance that person has traveled. TREYZ does not suggest a second memory for storing names of contractors or their car numbers and unit toll for each section along a highway and thus, such limitation would not have been obvious in view of TREYZ.

The second element is the recited toll calculation unit.

2

On page 17, lines 6-7 of the Examiner's Answer, the Examiner acknowledges that TREYZ does not disclose a server that includes a toll calculation unit. Rather, the Examiner relies on HASSETT for the suggestion to modify TREYZ to include this feature. Column 4, lines 31-44 of HASSETT are offered in the Official Action as disclosing this feature.

However, the proposed combination of references disregards the claimed invention as a whole.

In the toll payment system of the present invention, for a car entering and exiting from a toll highway, a portable telephone in the car is used to access a server, which includes a toll payment unit. Through the server, the portable telephone cooperates with a banking institution. Based on information such as location information based on communication with base stations connected to the portable telephone and electronic payment information, a person using the inventive system is able to pay a toll using a portable telephone.

TREYZ teaches the general concept of collecting a toll using a personal computer 14. See column 54, lines 30-51. However, TREYZ does not provide a disclosure as to how the toll is calculated or which variables are used for such calculation. It appears that the toll agency calculates the toll and the toll is paid through an electronic debiting of an account through a wireless interaction with the computer 14 of TREYZ.

3

HASSETT relies on each individual vehicle having a toll calculation unit calculating a toll for that vehicle. HASSETT uses a dedicated device on each vehicle to calculate the toll due. HASSET neither provides the motivation, nor provides the insight to calculate a toll at a server so that a toll can be paid using a portable telephone.

Thus, when the claims are properly analyzed under 35 USC 103 taking into account the invention as a whole, the present claims would not have been obvious over the proposed combination of references.

By way of further explanation, the present system is able to use a non-specific portable telephone to enable toll payment. The portable telephone communicates with the toll payment system by sending information to the system in response to a request from the system. The system confirms payment based on the communicated information. The information includes the user's information or the user's car information as well as the toll information based on the movement of the telephone past plural phone base stations.

TREYZ does not suggest such a system. HASSETT discloses a dedicated system with a transponder having a specified ID for each vehicle that transmits data to a toll collection facility and does not suggest toll information based on the movement of the telephone past plural phone base stations.

The proposed combination of references does not suggest obtaining information from a portable telephone using a driving route identified by base stations in contact with the portable telephone and communicating such information to the toll payment system after the portable telephone communicates with the system so that the portable telephone itself can be used to effect toll payment.

Independent claims 2, 17-20 and 23 include similar limitations and the analysis above regarding claim 1 is equally applicable to claims 2, 17-20 and 23.

The dependent claims are patentable at least for depending from an allowable independent claim.

In view of the foregoing, it follows that the rejection under §103 of claims 1-20 and 23 as unpatentable over TREYZ et al. in view of HASSETT is improper and should be reversed.

Reversal of this rejection is accordingly respectfully solicited.

Respectfully submitted,

YOUNG & THOMPSON

Reg No
41,949

Liam McDowell, Reg. No. 44,231
745 South 23rd Street
Arlington, VA 22202
Telephone (703) 521-2297
Telefax (703) 685-0573
(703) 979-4709

LM/lk

5